

MICHAEL J. GARCIA
 United States Attorney for the
 Southern District of New York
 By: PETER M. SKINNER
 Assistant United States Attorney
 86 Chambers Street, 3rd Floor
 New York, New York 10007
 Telephone: (212) 637-2601
 Facsimile: (212) 637-2730

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

-----	x	
GARY S. FISH, ESQ.,	:	ECF CASE
	:	
Plaintiff,	:	No. 07 Civ. 8142 (BSJ)
	:	
-against-	:	<u>NOTICE OF REMOVAL</u>
	:	
DEPARTMENT OF VETERAN AFFAIRS,	:	Index No. 033994/2007
	:	
Defendant.	:	
-----	x	

Defendant Department of Veterans Affairs (the "VA"), by its attorney, Michael J. Garcia, United States Attorney for the Southern District of New York, hereby removes the above-captioned action to the United States District Court for the Southern District of New York. The grounds for removal are as follows:

1. On or about June 29, 2007, Plaintiff Gary S. Fish commenced an action against the VA in the Civil Court of the City of New York, County of New York, by filing a Summons and Complaint under Index Number 033994/2007. On or about July 20, 2007, Plaintiff filed an amended complaint against the VA. A true and correct copy of the amended complaint is attached as Exhibit A.
2. Plaintiff claims that the VA violated Section 349 of the General Business Law of the State of New York. Plaintiff further seeks to initiate an interpleader action to

determine the rights to a \$2,500 check made payable to “J. Baum” that the VA apparently sent to Plaintiff.

3. This action is removable under 28 U.S.C. § 1442(a)(1) because Plaintiff has sued an agency of the United States.

4. This notice of removal is timely. A notice of removal of a civil action must be filed within thirty days of the defendant’s receipt of the initial pleading. *See* 28 U.S.C. § 1446(b). The “commencement of the removal period [can] only be triggered by formal service of process.” *Whitaker v. American Telecarting, Inc.*, 261 F.3d 196, 202 (2d Cir. 2001). The VA has not been properly served with Plaintiff’s summons and complaint. Thus, this notice of removal is timely, as the VA’s time to remove has not yet begun to run.

5. The submission of this notice of removal is solely for the purpose of removing this action to the appropriate federal court and is not a general appearance by the defendant. This submission does not constitute a waiver of any defense available to the defendant, including any defense under Rule 12 of the Federal Rules of Civil Procedure.

Dated: New York, New York
September 17, 2007

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
Attorney for Defendant Department
of Veterans Affairs

By: S/_____
PETER M. SKINNER
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2601
Facsimile: (212) 637-2730

TO: Gary S. Fish, Esq., *pro se*
15 Maiden Lane, Suite 1108
New York, NY 10038

CERTIFICATE OF SERVICE

I, PETER M. SKINNER, Assistant United States Attorney for the Southern District of New York, hereby certify that on September 17, 2007, I caused a copy of the Notice of Removal of Defendant Department of Veterans Affairs to be served by Federal Express upon the following:

Gary S. Fish, Esq., *pro se*
15 Maiden Lane, Suite 1108
New York, NY 10038

Dated: New York, New York
September 17, 2007

S/
PETER M. SKINNER
Assistant United States Attorney